

AMENDMENT NUMBER THREE
TO AN AGREEMENT
BETWEEN
THE CITY OF FRISCO, TEXAS (CITY)
AND
HALFF ASSOCIATES, INC. (CONSULTANT)
FOR
ENGINEERING
DESIGN SERVICES

Made as of the ____ day of _____ in the year Two Thousand Eight:

BETWEEN the City: **The City of Frisco, Texas**
6101 Frisco Square Boulevard
Frisco, Texas 75034
Telephone: (972) 292-5400
Facsimile: (972) 731-4945

and the Consultant: **Halff Associates, Inc.**
3801 Parkwood Boulevard, Suite 500
Frisco, Texas 75034
Telephone: (214) 618-4570
Facsimile: (214) 618-4574

for the following Project: **All Stars Avenue / County Road 712 Improvements**
 (Dallas North Tollway [DNT] to North County Road)

.....The City and Consultant agree as set forth below.

THIS AMENDMENT NUMBER THREE is made and entered by and between the City of Frisco, Texas, a Home-Rule Municipal Corporation, hereinafter referred to as "City," and Halff Associates, Inc., hereinafter referred to as "Consultant," to be effective from and after the date as provided herein the "Amendment Number Three."

WHEREAS, the City and Consultant entered into that certain agreement for professional engineering services to prepare Engineering Design Documents for All Stars Avenue / County Road 712 from Dallas North Tollway to North County Road in

the City, dated October 18, 2005, which agreement is incorporated herein by reference as if fully set forth herein, hereinafter referred to as the "Agreement;" and

WHEREAS, the City and Consultant entered into that certain Amendment Number One to the Agreement, for the purpose of extending the scope of the Project (defined in the Agreement) to include Additional Services; revising the Consultant's Fee (defined in the Agreement) to include the provision of the Additional Services; revising the percentage of the final payment of the Consultant's Fee allocated for the design of the Project (defined in the Agreement); referencing the Additional Services in relation to the Consultant's submission of invoices to the City (defined in the Agreement); referencing the Additional Services in relation to the City's ownership of the Project documents; and revising the information regarding notices or communications to City permitted or required under the Agreement, which agreement is incorporated herein by reference as if fully set forth herein, hereinafter referred to as the "Amendment Number One;" and

WHEREAS, the City and Consultant entered into that certain Amendment Number Two to the Agreement, dated September 25, 2007, to amend the Agreement for the purpose of extending the scope of the Project (defined in the Agreement and amended by Amendment Number One) to include Additional Services; revising the Consultant's Fee (defined in the Agreement and amended by Amendment Number One) to include the provision of the Additional Services; revising the percentage of the final payment of the Consultant's Fee allocated for the design of the Project (defined in the Agreement and amended by Amendment Number One); referencing the Additional Services in relation to the Consultant's submission of invoices to the City (defined in the Agreement and amended by Amendment Number One); and referencing the Additional Services in relation to the City's ownership of the Project documents (defined in the Agreement and amended by Amendment Number One), which agreement is incorporated herein by reference as if fully set forth herein, hereinafter referred to as "Amendment Number Two;" and

WHEREAS, the City and Consultant desire to amend the Agreement for the purpose of extending the scope of the Project (defined in the Agreement and amended by Amendment Number One and amended by Amendment Number Two) to include Additional Services; revising the Consultant's Fee (defined in the Agreement and amended by Amendment Number One and amended by Amendment Number Two) to include the provision of the Additional Services; revising the percentage of the final payment of the Consultant's Fee allocated for the design of the Project (defined in the Agreement and amended by Amendment Number One and amended by Amendment Number Two); referencing the Additional Services in relation to the Consultant's submission of invoices to the City (defined in the Agreement and amended Amendment Number One and amended by Amendment Number Two); and referencing the Additional Services in relation to the City's ownership of the Project documents (defined in the Agreement and amended by Amendment Number One and amended by Amendment Number Two), which agreement is incorporated herein by reference as if fully set forth herein, hereinafter referred to as "Amendment Number Three;" and

WHEREAS, the City and the Consultant desire to amend the Agreement as hereinafter set forth.

NOW, THEREFORE, KNOW ALL PERSONS BY THESE PRESENTS:

That for and in consideration of the covenants contained herein, the mutual benefits to be obtained hereby and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the City and Consultant do mutually agree as follows:

1. **Additional Project Services.** City and Consultant agree that this Amendment Number Three amends the Agreement for the purpose of, among other things, establishing additional Project services to be performed by Consultant, as more particularly described in the following exhibits, attached hereto and incorporated herein for all purposes:

- a. Exhibit "H," Scope of Additional Services, dated December 16, 2008.
- b. Exhibit "I," Completion Schedule / Project Billing / Project Budget for Additional Services, dated December 16, 2008.

2. **Amendment to Agreement, Article 1, Section 1.3, Schedule of Work.** Article 1, Section 1.3 of the Agreement is hereby amended as follows:

"1.3 **Schedule of Work** – The Consultant agrees to commence work immediately upon execution of this Agreement, and to proceed diligently with said work to completion as described in ~~the Completion Schedule/Project Billing/Project Budget attached hereto as Exhibit "B."~~ **the Completion Schedule/Project Billing/Project Budget for Additional Services, dated December 16, 2008 attached hereto as Exhibit "I,"** and incorporated herein by reference for all purposes, but in no event shall the design of the Project be completed any later than ~~May 30, 2008~~ **January 31, 2009.**"

3. **Amendment to Agreement, Article 3, Section 3.1, Compensation for Consultant's Services.** Article 3, Section 3.1 of the Agreement is hereby amended as follows:

"3.1 **Compensation for Consultant's Services** – As described in "Article 1, Consultant's Services," compensation for this Project shall be on a time and expense basis not to exceed ~~Two Hundred Thirty Nine Thousand Three Hundred and Eighty Five and 00/100 Dollars (\$239,385.00)~~ **Two Hundred Sixty Three Thousand Three Hundred Eighty Five and 00/100 Dollars (\$263,385.00)** ("Consultant's Fee") and shall be paid in accordance with Article 3 and the Completion Schedule/Project Billing/Project Budget as set forth in Exhibit "B." The final ~~four and one-~~

~~tenths percent (4.1%)~~ **three and seventy nine-tenths percent (3.79%)** of the Consultant's Fee, or Nine Thousand, Nine Hundred, Ninety Eight and 75/100 Dollars (\$9,998.75) shall not be paid until the Consultant has completed all of the services described in Exhibit "A," ~~and Exhibit "D"~~, ~~and Exhibit "F"~~ **and Exhibit "H"** delivered to the City all of the documents, data, maps, and/or other information required in Exhibit "A," ~~and Exhibit "D"~~, ~~and Exhibit "F"~~ **and Exhibit "H."**

4. **Amendment to Agreement, Article 3, Section 3.4, Invoices.** Article 3, Section 3.4 of the Agreement is hereby amended as follows:

"3.4 **Invoices** – No payment to the Consultant shall be made until Consultant tenders an invoice to the City. Payments are payable to the Consultant within thirty (30) days from the date of invoices as long as the invoice is mailed to City within three (3) days of the date of the invoice. Invoices are to be mailed to City immediately upon completion of each individual task listed in Exhibit "B," ~~and Exhibit "E"~~ **and Exhibit "G" and Exhibit "I."** If any invoice remains outstanding and unpaid for more than sixty (60) days from the date of the invoice, and Consultant has fully performed its obligations as set forth herein, the Consultant has the option upon written notice to the City, to suspend all work specified under this Agreement until the account is brought current. Continued performance and/or completion of work by the Consultant under this Agreement shall resume upon payment of the earned fees by the City."

5. **Amendment to Agreement, Article 4, Ownership of Documents.** Article 4 of the Agreement is hereby amended as follows:

"...

**ARTICLE 4
OWNERSHIP OF DOCUMENTS...**

...The Project is the property of the City, and Consultant may not use the documents, data, plans, or any other materials for any purpose not relating to the Project without City's prior written consent. City shall be furnished with such reproductions of the Project, data and maps as defined in the Project Deliverables section of Exhibit "A," ~~and Exhibit "D"~~ **and Exhibit "F" and Exhibit "H."** Upon completion of the work, or any earlier termination of this Agreement under Article 3 and/or Article 7, Consultant will revise plans, data and maps and any other information as defined in Exhibit "A," ~~and Exhibit "D"~~ **and Exhibit "F" and Exhibit "H."** to reflect changes made while working on the Project and promptly furnish the same to the City in an acceptable electronic format. All such reproductions shall be the property of the City who may use them without the Consultant's permission for any purpose relating to the Project, including, but not limited to, completion of the Project, and/or additions, alterations, modifications, and/or revisions to the Project."

6. **Complete Agreement.** This Amendment Number Three, including the exhibits attached hereto and labeled "H" and "I," both of which are incorporated herein for all purposes, constitutes the entire Agreement by and between the parties regarding the subject matter hereof and supersedes all prior and/or contemporaneous written and/or oral understandings. This Amendment Number Three may not be amended, supplemented, and/or modified except by written agreement duly executed by both parties. Exhibits "H" and "I" are attached hereto and made a part of the Agreement, Amendment Number One, Amendment Number Two, and this Amendment Number Three.
7. **Counterparts.** This Amendment Number Three may be executed in a number of identical counterparts. If so executed, each of such counterparts is deemed to be an original for all purposes, and all such counterparts shall, collectively, constitute one Amendment Number Three. A facsimile signature will also be deemed to constitute an original if properly executed.
8. **Controlling Agreement.** To the extent any provision contained herein conflicts with the Agreement, the provisions contained herein shall supersede such conflicting provisions contained in the Agreement.
9. **Defined Terms / Ratification of Agreement.** Any term not defined herein shall be deemed to have the meaning ascribed to it under the Agreement. Except as expressly amended hereby, all of the terms, provisions, covenants and conditions of the Agreement are hereby ratified and confirmed and shall continue in full force and effect.
10. **Authority to Execute.** The individuals executing this Amendment Number Three represent and warrant that they are empowered and duly authorized to so execute this Amendment Number Three on behalf of the parties they represent.
11. **Entire Agreement.** This Amendment Number Three, the Agreement, Amendment Number One, and Amendment Number Two embody the entire agreement by and between the parties regarding the subject matter hereof. There are no oral understandings or agreements between the parties regarding the subject matter hereof. This Amendment Number Three may only be amended by written agreement duly executed by all parties hereto.
12. **Venue.** The Agreement, Amendment Number One, Amendment Number Two, and Amendment Number Three shall be governed by and construed in accordance with the laws of the State of Texas and shall be performable in Collin County, Texas.
13. **Assignment.** This Amendment Number Three may not be assigned except as authorized in the Agreement.

IN WITNESS HEREOF, the parties have executed this Amendment Number Three to the Agreement, and caused this Amendment Number Three to be effective on the latest day as reflected by the signatures below.

Effective Date: _____

CITY

The City of Frisco, Texas

By: _____

George Purefoy

Title: City Manager

CONSULTANT

Halff Associates, Inc.

By: Rusty R. Glover

Rusty R. Glover, P.E.

Title: Project Manager

APPROVED AS TO FORM:

Clair E. B.

Abernathy, Roeder, Boyd and Joplin, P.C.

STATE OF TEXAS:

COUNTY OF COLLIN:

BEFORE ME, THE UNDERSIGNED AUTHORITY, A NOTARY PUBLIC IN AND FOR THE STATE OF TEXAS, ON THIS DAY PERSONALLY APPEARED **GEORGE PUREFOY**, KNOWN TO ME TO BE THE PERSON WHOSE NAME IS SUBSCRIBED TO THE FOREGOING INSTRUMENT AND ACKNOWLEDGED TO ME THAT HE EXECUTED THE SAME FOR THE PURPOSE AND CONSIDERATION EXPRESSED, AND IN THE CAPACITY THEREIN STATED.

GIVEN UNDER MY HAND AND SEAL OF OFFICE THIS ____ DAY OF _____, 2008.

NOTARY PUBLIC IN AND FOR THE STATE OF TEXAS

My commission expires: _____

STATE OF TEXAS:

COUNTY OF COLLIN:

BEFORE ME, THE UNDERSIGNED AUTHORITY, A NOTARY PUBLIC IN AND FOR THE STATE OF TEXAS, ON THIS DAY PERSONALLY APPEARED **RUSTY R. GLOVER, P.E.**, KNOWN TO ME TO BE THE PERSON WHOSE NAME IS SUBSCRIBED TO THE FOREGOING INSTRUMENT AND ACKNOWLEDGED TO ME THAT HE EXECUTED THE SAME FOR THE PURPOSE AND CONSIDERATION EXPRESSED, AND IN THE CAPACITY THEREIN STATED.

GIVEN UNDER MY HAND AND SEAL OF OFFICE THIS 3rd DAY OF December, 2008.

Sandy Smith

NOTARY PUBLIC IN AND FOR THE STATE OF TEXAS

My commission expires: 7/20/2011

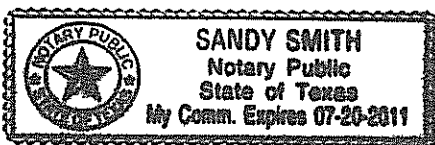


EXHIBIT "H"
SCOPE OF ADDITIONAL SERVICES, DATED DECEMBER 16, 2008
ATTACHMENT "A," CONSULTANT'S OPINION OF PROBABLE CONSTRUCTION
COSTS, DATED DECEMBER 16, 2008

Amendment Number Three
to an Agreement by and between
the City of Frisco, Texas (City)
and Halff Associates, Inc. (Consultant)
for the design and bid package preparation of
All Stars Avenue / County Road 712 Improvements
(Dallas North Tollway to North County Road)

I. PROJECT DESCRIPTION.

Engineering services related to the construction of a four (4) lane divided section between Frisco Street and the BNSF Railroad, and a thirty-seven foot (37') section from the BNSF Railroad to North County Road. The total length of the road to be constructed is approximately three thousand nine hundred linear feet (3,900') and includes paving, drainage and illumination. Landscape and irrigation design will be provided between Frisco Street and the BNSF Railroad within the proposed median. Approximately two thousand four hundred linear feet (2,400') of twelve-inch (12") waterline will be designed along the roadway between Frisco Street and the east line of the BNSF Railroad.

II. TASK SUMMARY, ADDITIONAL BASIC SERVICES.

- A. **Task Eight, Design Services for Sidewalk** – Consultant shall incorporate into the final design and bid package the sidewalk design within the BNSF Railroad right of way and revise plan sheets (estimated three (3) sheets). Coordinate the design with BNSF and revise permits as needed.
- B. **Task Nine, Design Services for Left Turn Lanes and Median Openings** – Consultant shall incorporate into the final design and bid package the design of two left turn lanes and median openings. Revise plan sheets as necessary (estimated twenty-two (22) sheets).

III. DELIVERABLES.

- A. **Required Deliverables, Revised Right-of-Way and Easement Documents** – Consultant shall submit the following Right-of-Way Documents to the City:
 - 1. **Right-of-Way Documents (Four (4) Documents)** – Right-of-Way Documents to include the following submittals:
 - 1.1 North Side between Frisco Street and John Elliott.

EXHIBIT "H"
SCOPE OF ADDITIONAL SERVICES, DATED DECEMBER 16, 2008
ATTACHMENT "A," CONSULTANT'S OPINION OF PROBABLE CONSTRUCTION
COSTS, DATED DECEMBER 16, 2008

- 1.2 South Side between Frisco Street and Railroad.
- 1.3 Railroad Right-of-Way.
- 1.4 North Side between John Elliott and Railroad.
- 2. Easement Documents, Slope Easement Documents (Five (5) Documents) – Slope Easement Documents to include the following submittals:
 - 2.1 North Side between Frisco Street and John Elliott.
 - 2.2 North Side between John Elliott and Railroad.
 - 2.3 South Side between Frisco Street and Railroad.
 - 2.4 Railroad Right-of-Way.
 - 2.5 South Side at intersection of County Road 712 and North County Road.
- 3. Easement Documents, Temporary Construction Easements (Six (6) Documents) – Temporary Construction Easements to include the following submittals:
 - 3.1 North Side between Frisco Street and John Elliott.
 - 3.2 North Side between John Elliott and Railroad.
 - 3.3 South Side between Frisco Street and Railroad.
 - 3.4 Railroad Right-of-Way.
 - 3.5 South Side at intersection of County Road 712 and North County Road.
 - 3.6 North Side at SCP Pools existing driveways.

IV. ITEMS NOT INCLUDED IN THE ADDITIONAL SCOPE OF SERVICES.

- A. **Additional Services not included in the existing Scope of Services** – City and Consultant agree that the following services are beyond the Scope of Services described in the tasks above. However, Consultant can provide

EXHIBIT "H"
SCOPE OF ADDITIONAL SERVICES, DATED DECEMBER 16, 2008
ATTACHMENT "A," CONSULTANT'S OPINION OF PROBABLE CONSTRUCTION
COSTS, DATED DECEMBER 16, 2008

these services, if needed, upon the City's written request. Any additional amounts paid to the Consultant as a result of any material change to the Scope of the Project shall be agreed upon in writing by both parties before the services are performed. These Additional Services include the following:

1. Quantities in excess of the amounts as stated in the Scope of Additional Services, dated December 16, 2008.

V. ATTACHMENTS.

EXHIBIT "I"
COMPLETION SCHEDULE / PROJECT BILLING / PROJECT BUDGET
FOR ADDITIONAL SERVICES, DATED DECEMBER 16, 2008

Amendment Number Three
To an Agreement by and between
the City of Frisco, Texas (City)
and Halff Associates, Inc. (Consultant)
for the design and bid package preparation of
All Stars Avenue / County Road 712 Improvements
(Dallas North Tollway to North County Road)

I. COMPLETION SCHEDULE / PROJECT BILLING SUMMARY.

MONTH / DATE / YEAR	DOLLAR AMOUNT	TASK COMPLETED
December 16, 2008	--	City Council approval of a Resolution authorizing the City Manager to execute Amendment Number Three; City issues Notice to Proceed to Consultant.
December 29, 2008	--	Consultant's receipt of fully executed Amendment Number Three.
December 31, 2008	\$ 5,000.00	Task Eight, Design Services for Sidewalk (Task Completed and all task-related deliverables completed as stated in Exhibit "A" and Exhibit "H" and accepted by the City).
December 31, 2008	\$ 19,000.00	Task Nine, Design Services for Left Turn Lanes and Median Openings (All deliverables completed as stated in Exhibit "A" and Exhibit "H" and accepted by the City).
January 31, 2009		Submittal of Required Deliverables, Revised Right-of-Way and Easement Documents (All deliverables completed as stated in Exhibit "A" and Exhibit "H" and accepted by the City).
Total Consultant's Fee, Amendment Number Three (Not-to-Exceed)	\$24,000.00	--

EXHIBIT "I"
COMPLETION SCHEDULE / PROJECT BILLING / PROJECT BUDGET
FOR ADDITIONAL SERVICES, DATED DECEMBER 16, 2008

II. PROJECT BUDGET SUMMARY.

	<u>Original Agreement</u>	<u>Amendment Number One</u>	<u>Amendment Number Two</u>	<u>Amendment Number Three</u>	<u>Revised Project Budget</u>
Basic Services, Design					
	\$ 164,475.00	\$ 160,000.00	\$ 160,000.00	\$ 160,000.00	\$ (4,475.00)
Additional Services, Right-of-Way Documents					
	\$ 6,000.00	\$ 6,600.00	\$ 8,800.00	\$ 8,800.00	\$ 2,800.00
Additional Services, Easement Documents					
	\$ 17,000.00	\$ 9,600.00	\$ 13,200.00	\$ 13,200.00	\$ (3,800.00)
Additional Services, Design Survey					
	\$ 12,500.00	\$ 8,500.00	\$ 8,500.00	\$ 8,500.00	\$ (4,000.00)
Subtotal – Basic and Additional Services	<u>\$ 199,975.00</u>	<u>\$ 184,700.00</u>	<u>\$ 190,500.00</u>	<u>\$ 190,500.00</u>	<u>\$ (9,475.00)</u>
Extra Services, Design Services of CR 712 (DNT-Frisco Street)	—	\$ 16,500.00	\$ 16,500.00	\$ 16,500.00	\$ 16,500.00
Extra Services, Survey Services of CR 712 (DNT-Frisco Street)	—	\$ 4,000.00	\$ 4,000.00	\$ 4,000.00	\$ 4,000.00
Extra Services, Survey Services at SPC Pool Site		\$ 1,500.00	\$ 1,500.00	\$ 1,500.00	\$ 1,500.00
Extra Services, provide a geotechnical investigation per the subgrade design requirements, including staking of bore hole locations	—	\$ 16,885.00	\$ 16,885.00	\$ 16,885.00	\$ 16,885.00
Extra Services, Design of approximately 2,400 LF of 12-inch water line	—	—	\$ 10,000.00	\$ 10,000.00	\$ 10,000.00
Extra Services, Design of sidewalks within BNSF RR, coordination with BNSF	—	—	\$ -	\$ 5,000.00	\$ 5,000.00
Extra Services, Design of left turn lanes and median openings, revise 22 sheets	—	—	\$ -	\$ 19,000.00	\$ 19,000.00
Subtotal – Extra Services	<u>\$ -</u>	<u>\$ 38,885.00</u>	<u>\$ 48,885.00</u>	<u>\$ 72,885.00</u>	<u>\$ 72,885.00</u>
Grand Total, Revised Project Budget (Not-to-Exceed)	\$ 199,975.00	\$ 223,585.00	\$ 239,385.00	\$ 263,385.00	
Difference, Revised Budget					\$ 63,410.00